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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN THE MATTER OF THE COMPLAINT OF K SEA OPERATING PARTNERSHIP, LP, K-SEA TRANSPORTATION, INC., THE CITY OF PHILADELPHIA, K-SEA TRANSPORTATION PARTNERS, LP, K-SEA GENERAL PARTNER LP, AND K-SEA GENERAL PARTNER GP LLC AS OWNERS, OWNERS *PRO HAC VICE* AND ALLEGED OWNERS AND OPERATORS OF THE BARGE *THE RESOURCE* AND TUG *CARIBBEAN SEA*, FOR EXONERATION FROM OR LIMITATION OF LIABILITY.	C.A. NO. 10-5750-CMR IN ADMIRALTY

ANSWER AND CLAIMS OF RIDE THE DUCKS INTERNATIONAL, LLC AND HERSCHEND FAMILY ENTERTAINMENT CORPORATION TO COMPLAINT FOR EXONERATION FROM OR LIMITATION OF LIABILITY

Claimants, Ride The Ducks International, LLC and Herschend Family Entertainment Corporation (hereinafter "Claimants"), by and through their undersigned counsel, Rawle & Henderson, LLP, hereby appear within the time period specified by this Honorable Court to present their existing and contingent claims and hereby answer the complaint of K Sea Operating Partnership, LP, K-Sea Transportation, Inc., The City Of Philadelphia, K-Sea Transportation Partners, LP, K-Sea General Partner LP, and K-Sea

General Partner GP LLC (hereinafter "Plaintiffs") As Owners, Owners *Pro Hac Vice* and Alleged Owners and Operators Of The Barge *The Resource* And Tug *Caribbean Sea* (hereinafter "Vessels"), For Exoneration From Or Limitation Of Liability pursuant to Rule F(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims, and in support thereof, allege on information and belief as follows in response to each allegation of the petitioning plaintiffs:

ANSWER

1. The allegations of paragraph 1 of the Complaint contain conclusions of law to which no responses are required, and they are therefore denied.

2. The allegations of paragraph 2 of the Complaint contain conclusions of law to which no responses are required, and they are therefore denied.

3. Admitted in part, denied in part. It is admitted only that the City of Philadelphia was and remains a municipality under the laws of the Commonwealth of Pennsylvania. The remaining allegations contained in Paragraph 3 of the Complaint are denied for lack of sufficient information to justify a belief therein.

4. The allegations contained in Paragraph 4 of the Complaint are denied for lack of sufficient information to justify a belief therein.

5. The allegations contained in Paragraph 5 of the Complaint are denied for lack of sufficient information to justify a belief therein.

6. The allegations contained in Paragraph 6 of the Complaint are denied for lack of sufficient information to justify a belief therein.

7. The allegations contained in Paragraph 7 of the Complaint are denied for lack of sufficient information to justify a belief therein.

8. The allegations contained in Paragraph 8 of the Complaint are denied for lack of sufficient information to justify a belief therein.

9. The allegations contained in Paragraph 9 of the Complaint are denied for lack of sufficient information to justify a belief therein.

10. The allegations of paragraph 10 of the Complaint are admitted.

11. The allegations contained in Paragraph 11 of the Complaint are denied for lack of sufficient information to justify a belief therein.

12. The allegations contained in Paragraph 12 of the Complaint are denied for lack of sufficient information to justify a belief therein.

13. The allegations contained in Paragraph 13 of the Complaint are denied for lack of sufficient information to justify a belief therein.

14. The allegations contained in Paragraph 14 of the Complaint are denied.

15. The allegations contained in Paragraph 15 of the Complaint are denied for lack of sufficient information to justify a belief therein.

16. The allegations contained in Paragraph 16 of the Complaint are denied for lack of sufficient information to justify a belief therein.

17. Admitted in part, denied in part. It is admitted only that the Barge *Resource* and Tug *Caribbean Sea*, allided or collided with the DUKW 34 near Penn's Landing at or about 1:36 p.m. on July 7, 2010. The remaining allegations contained in Paragraph 17 of the Complaint are denied.

18. The allegations of paragraph 18 of the Complaint are admitted.

19. The allegations of paragraph 19 of the Complaint are admitted.

20. The allegations of paragraph 20 of the Complaint are denied.

21. The allegations of paragraph 21 of the Complaint are denied.

22. The allegations contained in Paragraph 22 of the Complaint are denied for lack of sufficient information to justify a belief therein.

23. The allegations contained in Paragraph 23 of the Complaint are denied for lack of sufficient information to justify a belief therein.

24. The allegations contained in Paragraph 24 of the Complaint are denied for lack of sufficient information to justify a belief therein.

25. The allegations of paragraph 25 of the Complaint are denied.

26. The allegations contained in Paragraph 26 of the Complaint are denied for lack of sufficient information to justify a belief therein.

27. The allegations contained in Paragraph 27 of the Complaint are denied for lack of sufficient information to justify a belief therein.

28. The allegations of paragraph 28 of the Complaint contain conclusions of law to which no responses are required, and they are therefore denied.

29. The allegations contained in Paragraph 29 of the Complaint are denied for lack of sufficient information to justify a belief therein.

30. The allegations contained in Paragraph 30 of the Complaint are denied for lack of sufficient information to justify a belief therein.

31. The allegations of paragraph 31 of the Complaint are denied.

32. The allegations of paragraph 32 of the Complaint are denied.

33. The allegations of paragraph 33 of the Complaint are denied.

34. The allegations of paragraph 34 of the Complaint are denied.

35. The allegations of paragraph 35 of the Complaint are admitted.

36. The allegations of paragraph 36 of the Complaint contain conclusions of law to which no responses are required, and they are therefore denied.

FIRST DEFENSE

The allegations of the Complaint fail to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6).

SECOND DEFENSE

Claimants reserve the right to challenge the Plaintiffs' alleged interest in the Vessels and/or the alleged valuation of the Vessels.

THIRD DEFENSE

The limitation fund is inadequate and the Complaint should be dismissed because Plaintiffs have failed to deposit "a sum equal to the amount or value of the owner's interest in the Vessels" or adequate security for the Vessels and for the additional vessels within the flotilla, which were under a common operational control, supervision, and enterprise.

FOURTH DEFENSE

The limitation fund is inadequate and the Complaint should be dismissed because Plaintiffs have failed to deposit adequate security for the Vessels identified in the Complaint and for the additional vessels within the flotilla which were under common operational control, supervision and enterprise. Pursuant to Rule F(1) of the Supplemental Rules for Certain Admiralty and Maritime Claims, the proper limitation fund must be deposited at the time of filing. Plaintiffs' deposit, at the time of filing, did not meet federal standards. As such, this limitation action must be dismissed.

FIFTH DEFENSE

Plaintiffs, or certain of them, are not a proper party plaintiff under the Shipowner's Limitation of Liability Act and should be dismissed from the action.

SIXTH DEFENSE

The Limitation of Liability Act is not applicable to the instant case because at all times pertinent herein, the Vessels and vessels contained within the flotilla were operated in a willful, wanton, and reckless manner or, in the alternative, the conduct and actions which lead to Claimants' injuries took place with the privity and knowledge of the owners, managing owners, owners *pro hac vice*, and/or operators of the Vessels involved.

SEVENTH DEFENSE

The Limitation of Liability Act is not applicable in the instant case because at all relevant times, the Vessels and/or the other vessels contained within the flotilla were known by the owner and/or owner *pro hac vice* to be unseaworthy.

EIGHTH DEFENSE

The incident and resulting damages which are the subject of the Plaintiffs' Complaint was caused by the fault, negligence, breach of warranty, statutory and regulatory violations of the plaintiffs, their agents, servants, contractors or employees and/or the unseaworthiness of the Vessels and, therefore, Plaintiffs' prayer for a decree of exoneration from liability must be denied.

NINTH DEFENSE

The Complaint for Exoneration From or Limitation of Liability contains vague and ambiguous statements which are objectionable under Federal Rule of Civil Procedure 12(e), and Claimants seek more definitive statements of the allegations, regardless of the nature, manner and extent of their Claim and Answer herein.

TENTH DEFENSE

The events culminating in the injuries of Claimants were the result of the negligence, fault, or want of due care on the part of Plaintiffs and/or those for whom Plaintiffs are responsible, and/or the unseaworthiness of the Vessels and/or other vessels within the flotilla under common operational control, supervision and enterprise, all of which was within the privity and knowledge of Plaintiffs, for which the Complaint for Exoneration From of Limitation of Liability should be denied.

ELEVENTH DEFENSE

The events culminating in the injuries of Claimants were not the result of any negligence, fault, or want of due care on their part or those for whom they may be responsible.

TWELFTH DEFENSE

Claimants state that the proceeds of any judgment, award, or settlement which may be received by Plaintiffs from any third party in recompense of any losses or damages sustained herein to the property or interests of Plaintiffs, as a result of the fault or alleged fault of said third party, must be included in the limitation fund.

THIRTEENTH DEFENSE

In filing this Answer and Claim, Claimants specifically reserve all rights to pursue all available claims in state court for resolution of any and all issues beyond the exclusive jurisdiction of this Admiralty Court pursuant to the "Savings to Suitors" clause, 28 U.S.C. §1333, and all state law remedies. The filing of this Claim and Answer is in no way a waiver of this right and defense and Claimants are not agreeing to join all issues in this proceeding by filing this Claim and Answer.

FOURTEENTH DEFENSE

In filing this Answer and Claim, Claimants specifically reserve all rights to pursue all available claims in federal court, including but not limited to their Complaint for Exoneration from or Limitation of Liability filed in the United States District Court for the Eastern District of Pennsylvania at case number 11-0079-CMR

FIFTEENTH DEFENSE

Claimants specifically reserve all rights to pursue all available claims, including any contingent claims, and no part of this Claim and Answer is a waiver of this defense or these rights.

CLAIM

Specifically reserving all rights and defenses asserted herein, Answering Claimants Ride The Ducks International, LLC and Herschend Family Entertainment Corporation file their Claims in the Complaint for Exoneration from or Limitation of Liability of K Sea, and state that:

1. Claimants re-urge and re-allege each and every defense and objection set forth above as if the same were stated herein verbatim.

2. Claimants suffered loss of and damage to its valuable vessel, the DUKW 34, loss of use, lost profits, both for the damage sustained to the DUKW 34 and for the indefinite suspension of all operations of the Claimants in the Port of Philadelphia, and other damages as a result of the senseless incident caused by Plaintiffs on July 7, 2010.

3. Plaintiffs are negligent, negligent per se, grossly negligent, and reckless for the following reasons:

   a. failure to properly supervise their crew;

b. failure to properly train their employees;

c. failure to provide adequate safety equipment;

d. operating the vessel with an inadequate crew;

e. failure to properly maintain the vessel;

f. failure to conduct a proper search and rescue mission;

g. vicariously liable for their employees' and agents' negligence, gross negligence, and recklessness;

h. violating applicable Coast Guard regulations and Inland Rules;

i. placing incompetent persons in charge of the Vessels;

j. failing to keep a proper and good lookout;

k. failing to operate the Vessels at a moderate rate of speed under the circumstances;

l. failing to keep the Vessels to their own starboard side of the channel as required by the Inland Rules;

m. failing to alter course or stop and reverse engines when the risk or danger of allision or collision was or should have been apparent;

n. failing to take any action to avoid the allision or collision;

o. failing to have proper and adequate policies and procedures; and

p. other acts deemed negligent, grossly negligent, and reckless as may be shown at trial.

4. At all relevant times, the Barge *Resource* and Tug *Caribbean Sea* were unseaworthy.

5. As a result of said occurrences, Claimants sustained heavy and significant damages consisting of the cost of salvaging the DUKW 34, the cost of repairs, the loss of use of the DUKW 34, a loss of earnings in the past, as well as a loss of future earning capacity, and other substantial expenses necessarily incurred and to be incurred as a direct and proximate result of the allision which cannot be fairly estimated at present.

6. Claimants are also entitled to punitive damages because the aforementioned actions of Plaintiffs were grossly negligent and reckless. Plaintiffs' conduct was willful, wanton, arbitrary, and capricious. They acted with flagrant and malicious disregard of Claimants' property, business and safety and the health and safety of their employees and passengers. Plaintiffs were subjectively aware of the extreme risk posed by the conditions which caused Claimants' damages, but did nothing to rectify them. Instead, Plaintiffs had crew members continue working despite the dangerous conditions that were posed to them and the faulty, defective equipment provided to them. Plaintiffs did so knowing that the conditions posed dangerous and grave safety concerns. Plaintiffs' acts and omissions involved an extreme degree of risk considering the probability and magnitude of potential harm to Claimants and others. Plaintiffs had actual, subjective awareness of the risk, and consciously disregarded such risk by allowing crew members to work under such dangerous conditions. Moreover, Claimants may recover punitive damages under the general maritime law because of the Vessel's unseaworthiness. All of the conduct mentioned in the above paragraphs was within the knowledge and privity of Plaintiffs.

7. In addition, Claimants are entitled to indemnity or contribution for claims that other persons, parties and entities have made and for actions commenced against

Claimants for damages in connection with or arising out of the incident which is the subject of the Plaintiffs' Complaint.

8. The collision or allision and damage were not caused by or contributed to by any fault or neglect on the part of the Claimants but, on the contrary, were caused wholly by, and solely due to the fault, neglect and want of care on behalf of the petitioning Plaintiffs, their vessels and those in charge of their vessels.

9. The limitations periods which may be applicable to any such potential claims against Claimants have not expired and, therefore, Claimants hereby file this contingent portion their claim within the time specified by this Honorable Court, serving notice of its intention to defend any such actions and to hold the petitioning Plaintiffs responsible for any and all sums, damages, judgments, or legal expenses incurred by or assessed against them, including but in no way limited to demands for indemnity or contribution, and reserving all of their rights and defenses against the petitioning Plaintiffs, including but not limited to the pursuit of such rights and defenses by way of claim, amended claim, counter-claim or cross-claim in this proceeding, if and to the extent that such claims are or may be properly subject to a proceeding commenced under the Shipowner's Limitation of Liability Act.

Wherefore, Claimants pray that after due proceedings are had that:

1. The Complaint seeking Exoneration From or Limitation of Liability be dismissed and the injunction or restraining order granted in this matter be dissolved;

2. Alternatively, Plaintiffs be required to deposit additional security in the minimum amount required by law for the full value of all vessels in the flotilla which were under common operational control and supervision and engaged in a common enterprise and that said security be by way of a cash deposit into the registry of the Court or a bond issued by a surety approved by the Court and be based upon an appraisal issued

by a commissioner appointed by the Court; in default of which the Complaint seeking Exoneration From or Limitation of Liability be dismissed; and pending such deposit any injunction and/or restraining order be dissolved;

3. There be judgment rendered herein in favor of Claimants, and against Plaintiffs, both jointly and severally, for all damages as are reasonable in the premises, together with the maximum legal interest thereon from the date of the accident until paid and for all costs of this proceeding;

4. For all such other and further relief to which Claimants may be entitled under law and in equity.

Dated: Philadelphia, Pennsylvania

January 31, 2011

RAWLE & HENDERSON, LLP

/s/ Gary F. Seitz

By: ______________________

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CERTIFICATE OF SERVICE

Gary F. Seitz does hereby certify that a true and correct copy of the foregoing Answer and Claims has been sent by electronic messaging and ECF transmittal along with First Class U.S. Mail to all counsel and parties as follows:

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RAWLE & HENDERSON, LLP

/s/ Gary F. Seitz

By: ______________________________
Gary F. Seitz

Date: January 31, 2011